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UNITED STATES DISTRICT COURT ALBUQUERQUE, NEW MEXICO

DISTRICT OF NEW MEXICO

OCT 18 2021

CARNELL HUNNICUTTISE Plaintiff

CLERK

NO. 2:21-CV-00867-JCH-JFR

ALLSHA TAFOYA-LUCERO, et.al

PLAINTIFF'S REPONSE TO DEFENDANT KEEFE GROUP LLC'S MOTION TO

DUMISS AND MEMORANDUM IN SUPPORT THEREOF

COMES NOW Pro Se Plaintiff Carnell Hunnicutt. Son response

to the Defendant Keefe Groupilla Motion to Dismissi states as

fallows:

Introduction

Pro Se Plaintiff Carnell Hunnicutt Sr. is a prisoner housed at the Southern New Mexico Correctional Facility. On December 22,2020, filed the Complaint on this matter in the First Judicial District Court for the State of New Mexico. Plaintiff repeatedly attempted to the New Mexico Secretary of State Office to serve Keefe Group without success only to lose \$25,000 processing Fee never returned (Attachments A) This explains thedelay for Defendant Keete receiving the Complaint in August 2021. Plaintiff's Response to Defendant Keefe Group, UC's Motion to Dismiss and Memorandom In Support Thereat Fallows.

Plaintiff brings claims against corrupt state defendants and Keefe Access, a better known corporate prostitute who solicits contracts from governmental agencies to provide shoddy services, while selling interior products of their knock-off brands for inflated prices to the prisoner market. These defendants actions violate state and federal anti-trust laws, including the New Alexico Anti-Trust Act, the Sherman Act, the Clayton Act, and the Robinson-Patman Act. To support his claims Plaintiff

focuses on the fact that he has no other avenue but to purchase food items only from Keefe Group. Although other opproved vendous Competitors tood items which are cheaper at fair market value are banned due to Keete Group manapaly on said items. The same applies to Keete Group Access Jecuse Pakand Access Corrections Music Services. Because of the manapaly, it enables keefe Group, a singular entity to conner the market. allows for predatory marketing and pricing practices to be promu gasted against the Plaintiff prisoners. The Plaintiff complains that the defendants entered into a collusive correctional contract that under cutsall competition on the front end to resplange vews rds after the contract (1) are susuded by price incresses, mank-ups on services / food items, with no competitive choice. This manapoly do not exist without the agreement of of a governmental agency acting in collusion with another party. [Doc. 1-2 at 16]. Plaintiffifsets support his claims that the Defendants are exploiting prisoners ! himself by changing exorbitant prices that exceed fair market value with no competition choice(s). LDoc. 1-2 at TT 16, 23-24]

## II. LEGAL STANDARD

"A pro so litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." but a "broad reading of the plaint. It's complaint does not relieve the plaint. It of the burden of alleging sufficient facts on which a legal claim could be based." Hall v. Bellmon. 935 F. 2d 1106, 1110 (10th Cir. 1991). To survive dismissal under Fed. R. Civ. P., 12(b) 6, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausiable on it's face." Leverington v. City of Colorado Springs, 643 F. 3d 719, 723 (10th Cir. 2011) (quoting Ashcroft v. Iqbal. 556 U.S. 662, 678 (7009).

This standard does not require "detail factual allegations," but does require more than "lables and conclusions" or "a tormulaic recitation of the elements of a cause of action." Rell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citation omitted). When applying the standard. the Court must "assume the truth of all well-pleaded facts in the complaint, and draw all reasonable inferences there from in the most Asvorable to the plaintiff's. Loverington, 643 F. 3dat 723 (quoting Diarv. City & County of Denver, 567 F. 3d 1169, 1178 (10th Cir. 2009). The plausibility standard is not akin to a 'probability requirement' but .. [does ] ask[] for more than a sheer possibility that a defendant acted unlawfully." Id. citing Twombly, 550 U. S. at 556). "[A] well-pleaded complaint may proceed even if it striker a savvy judge that actual proof of those facts is improbable, and that a recovery is remote and unlikely." Twombly, 550 U.S. at 556 Guoting Scheuer v. Rhoder, 416 U.S. 232, 236 (1974). A complaint need only to wraine a right to relief above the speculative level ... on the arrumption that all [it's] allegations... are true (even if doubtfulin fact)." Id. at 555 (citations amitted). However. "[W] here a complaint pleads facts that are 'merely consistent with's defendant's liability. it stops short of the line between possibility and plausibility of 'entitlement to relief." Ighal, 556U.S. at 678 (quoting Twombly, 550 U.S. at 557). Here, all of Plaintiff's claims are not subject to dismissal for stating claims under the Unfair or Deceptive Acts or Practices and otate /federal Anti-Truit Lawragainst Defendant Keefe.

IIT Analysis

Plaintiff: complaint and claims of anti-competitive conduct against Keefe are pretty clear that the monopoly it has an the New Mexico

Correctional Department violates the New Mexico Antitrust Act. Sherman Antitrust Act, Clayton Act, and the Robinson-Patman Act. A. Plaintiffic claims under the New Mexico Antitrust Act must grave! by Plaintiff's claims pursuant to the New Mexico Antitrust Act (Will Stat. Ann. 357-1-3) which states "Contracts for restraint of trade or monopoly void" must prevail as a matter of law because it voids out the contract at irrur. Keefe's attorney aroument that Section 57-1-16A) of NMSA 1978:57-1-1 is flawed, he states that said section "explicitly authorized the contract at isrue" (to create a mionopoly). What 57-1-16 [lawfulactivities] atoter is " Nothing contained in the Anti trust Act [57-1-1 to 57-1-17 NMGA 1978] is intended to prohibit actions which A. clearly and expressly authorized by any state agency or regulatory body acting under a clearly articulated and aftermatively expressed state policy to displace competition with regulation; and B. actively supervised by state agency or regulatory body which is constitutionally or statutorily granted the authority to supervise such actions when the agency or regulatory body does not have any proprietary interest in the action.

The Defendants in this matter think the word displace means monopoly when it doesn't. Section 33-1-17(B) applies to correctional tacilities in Guadalupe. Lea and Santa Fe New Mexico, not Dona Ana. Section 57-1-3 at the New Mexico Antitrust Act 57-1-1. I NMSA 1978 applies not merely to contracts that are on their face violative of the Act, but also to facially legal contracts that have the object of violating the antitrust laws: the defense of contract illegality stems from the express provision of the Act. United Nuclear Corp. v. General Atomic Co., 1980-NIMIC-094.96 N. M. 155, 629 P.2d 231, 1980 N. M. Lexis 2727 (N. M. 1980), cert. denied. 451 U.S. 901, 101 S. Ct. 1966, 68 L. Ed. 2d 289.

1981 U.S. LEXIS 1637 (U.S. 1981). Section 57-1-3 allows the Plaintiff to sue the Defendants for price fixing. See California V. ARC America Corp., 490 U.S. 93, 109 S. Ct. 1661, 104 L.Ed. 2d 86, 1989 U.S. LEXIS 2024 (U.S. 1989) (Pursuant to this section (57-1-3), indirect purchasers of products that have been subject to price fixing are allowed to sue for all overcharges passed on to them by direct purchasers.)

NMSA \$ 57-1-4 does not exempt the Defendants and NMSA \$ 57-1-13

does not ban the Plaintiff from pursuing Keefe under the Anti-trust Act involving intenstate or foreign commerce.

B. Plaintiff's Federal Antitrust Claims must Prevail and States a Claim that will Prevail

Plaintiff assertion of federal laws being violated that includes, the Sherman Anti-trust Act, Clayton Anti-trust Act, and Robinson Patman Act. The Plaintiff claims that the restraint of trade through the combination conspiracy. Through contract to monopolize violate there federal acts. Plaintiff is not claiming the federal constitution to be provided with retail outlets. Plaintiff claims he's being subjected to untain or deceptive acts or practices ("UDAP") that is causing substantial injury to himself and consumers which is not reasonably avoidable, and not outweighed by countervailing benefits to consumers or to competition. 15 U.S. C. & 45 cm (2012). Plaintiff have an actionable claim for untain or unconscionable practices because at his inability to avoid injury: Keete sell essential goods (Services through state created monopolies (monopoly) and employ untaintactics. Plaintiff have no alternative. As one court found, tamilies who pay exorbitant phonesister do so out of sheer desperation for contact with their loved ones, James v. Global \* Tel Link, No. 13-cv-4989, 2018 WL 3727371at \* 2 (D. N. J.

Aug. 6, 2018) (opinion re: motion to certify class). Under the UDAP Plaintiff claims are on the frequent facial violations of said statute, in the form of use of monopoly power to extract excernive feed see E.g. Ford v. Chart One Inc. 908 A. 21 72 (D.C. App. 2006) (concumer pleaded a valid claim for unconsciously high pricer under the D. C. Consumer Protection Procedures Act where plaintiffe only way to obtain copier of his own medical records was to pay \$ 6.36 per page to contractor relected by the medical provider); Plaintiff claim Keefe payra kickback to the issuer of a government contract that results in exorbitant free passed on to the Plaintiff. Stalker v. MBS Direct. No. 10-11355. 2011 WL797981, at \* 6 (E.D. Mich. Mar. L 2011) (plaintiff: properly stated a claimunder the Michigan Consumer Protection Act by alleging that 4-11% commission that book vendor paid to school district unreasonably inflated cost of texthooks sold to students): class cent devied 2012 WL bb42518 (E.D. Mich. Dec. 20,2012) Because Keete in able to use it's market power to inflict harm on the Plaintiff prisoners. it's trade practices are potentially subject to a private action under section 4 of the Clayton Act. 15 U.S.C. \$15 (2012), Keete Violates the Robinson-Botman Act through it's price discrimination and the Sharmon Anti Trust Act for unreasonable restraint of trade. The Plaintiff and those similarly situated are being injured and continue to be injured by unfair and deceptive acts or practices with no ability to avoid injury by Keete and it's monopoly. W. Conclusion

WHEREFORE, for the torgoing rescons. Plaintiff respectfully request this Court go Forward with Plaintiffic complaint, and grant other relief at the Court deems justznaproper

> Respectfully submitted. CARDEL HUNDICUTTISE
> SUMCE ZARIOD
> FOROX 639
> LAI CRUCETI, NM 88004

	CERTIFICATION OF SERVICE
	I hereby certify that on this 12th day of October 2021, I
	submitted & copy of the following via SWMCF institutional mail
	to:
	GALLAGHER & KENNEDY, DA
	Scott woody 1239 Paseo De PERALTA SANTA FEINM 87501-2758
	CARNELLHUNNICUTT, SIZ
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MR. CARNELL HUNNICUTTISE. 77910

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